



**6450-01-P**

**DEPARTMENT OF ENERGY**

**Western Area Power Administration**

**Office of General Counsel; Agency Information Collection Extension**

**AGENCY:** Western Area Power Administration, Department of Energy.

**ACTION:** Submission for Office of Management and Budget review; request for comments.

**SUMMARY:** Western Area Power Administration (WAPA), an agency within the Department of Energy (DOE), submitted an extension to an existing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review, comment, and approval, as required under the Paperwork Reduction Act of 1995. The ICR seeks a 3-year extension for WAPA's Applicant Profile Data form (APD), OMB Control No. 1910-5136. The ICR described below identifies the request, including the anticipated public burden. The ICR is necessary for the proper performance of WAPA's functions. WAPA markets a limited amount of Federal hydropower. Due to the high demand for WAPA's power, WAPA needs the ability to collect information under the ICR in order to evaluate who may receive an allocation of Federal power pursuant to specific marketing plans. This APD public process only determines the information WAPA will collect in its ICR. The actual allocation of Federal power will be conducted through a separate marketing plan process outside the scope of this APD process.

**DATES:** To ensure consideration, comments regarding this collection must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Paperwork Reduction Act requires OMB to make a

decision on the extension of the ICR within 60 days after this publication or receipt of the proposed collection of information, whichever is later. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. You may phone the Desk at 202–395–4718.

**ADDRESSES:** Written comments should be sent to: The DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503.

A copy of the comments should be sent to WAPA, attention Mr. Brent Osiek, Vice President of Power Marketing, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111 or by e-mail to [osiek@wapa.gov](mailto:osiek@wapa.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the APD should be directed to Mr. Brent Osiek at the above address or by telephone at 801–524–5495. The APD is available on WAPA’s Web page at [www.wapa.gov/PowerMarketing/Pages/applicant-profile-data.aspx](http://www.wapa.gov/PowerMarketing/Pages/applicant-profile-data.aspx) and [www.wapa.gov/PowerMarketing/Documents/Applicant-Profile-Data-form.pdf](http://www.wapa.gov/PowerMarketing/Documents/Applicant-Profile-Data-form.pdf).

## **SUPPLEMENTARY INFORMATION:**

### **I. Statutory Authority**

Reclamation Laws are a series of laws arising from the Desert Land Act of 1877 and include, but are not limited to: The Desert Land Act of 1877, Reclamation Act of 1902, Reclamation Project Act of 1939, and the Acts authorizing each individual project such

as the Central Valley Project Authorizing Act of 1937.<sup>1</sup> The Reclamation Act of 1902 established the Federal reclamation program.<sup>2</sup> The basic principle of the Reclamation Act of 1902 was that the United States, through the Secretary of the Interior, would build and operate irrigation works from the proceeds of public land sales in the sixteen arid Western states (a seventeenth was later added). The Reclamation Project Act of 1939 expanded the purposes of the reclamation program and specified certain terms for contracts that the Secretary of the Interior enters into to furnish water and power.<sup>3</sup> In 1977, the Department of Energy Organization Act transferred the power marketing functions of the Department of the Interior to the Secretary of Energy, acting by and through a separate Administrator for WAPA.<sup>4</sup> Section 5 of the Flood Control Act of 1944 is read *in pari materia* with Reclamation Laws with respect to WAPA.<sup>5</sup>

## **II. Purpose of Proposed Collection**

WAPA is collecting – and will continue to collect – the data under its APD to properly perform its function of marketing a limited amount of Federal hydropower. The information WAPA collects is voluntary. Due to the high demand for WAPA’s power and limited amount of available power, WAPA will use the information collected in the APD – and has used the information collected under the current OMB-approved control number – pursuant to its marketing plans, to determine an applicant’s eligibility for an allocation of Federal power. As a result, the information WAPA collects under its APD is both necessary and useful.

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<sup>1</sup> See Ch. 107, 19 Stat. 377 (1877), Ch. 1093, 32 Stat. 388 (1902), Ch. 418, 53 Stat. 1187 (1939), Ch. 832, 50 Stat. 844, 850 (1937), all as amended and supplemented.

<sup>2</sup> See Ch. 1093, 32 Stat. 388 (1902), as amended and supplemented.

<sup>3</sup> See Ch. 418, 53 Stat. 1187 (1939), as amended and supplemented.

<sup>4</sup> See 42 U.S.C. 7152(a)(1)(D).

<sup>5</sup> See Act of December 22, 1944, Ch. 665, 58 Stat. 887, as amended and supplemented.

WAPA notes the Paperwork Reduction Act<sup>6</sup> is the process whereby WAPA obtains approval from OMB to collect information from the public. It is a legal requirement that WAPA must comply with before requesting an interested party submit an application for power. The Paperwork Reduction Act process is not the process in which interested parties apply for a new allocation of Federal power. The allocation of power from WAPA is outside the scope of this process and is completed in a separate marketing plan process by each WAPA region, when required.

### **III. Background to This Process and Responses to Comments**

#### *A. Background*

On May 18, 2017, in compliance with the Paperwork Reduction Act, WAPA published a notice in the *Federal Register* inviting comments on extending WAPA's APD, OMB Control No. 1910–5136.<sup>7</sup> WAPA provided a 60-day comment period. As part of that notice, WAPA invited comments on: (1) Whether the proposed continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

In May 2017, concurrent with the publication of the *Federal Register* notice, WAPA

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<sup>6</sup> See 44 U.S.C. 3501, et seq.

<sup>7</sup> See 82 FR 22825 (2017).

posted an Invitation for Comments on its Web page at [www.wapa.gov/PowerMarketing/Pages/applicant-profile-data.aspx](http://www.wapa.gov/PowerMarketing/Pages/applicant-profile-data.aspx). WAPA e-mailed over 1,000 stakeholders (customers, interested parties, and customer associations) informing them of the publication of the *Federal Register* notice and Invitation for Comments. The e-mail went to stakeholders in WAPA's service territory, which includes, but is not limited to, Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah, and Wyoming.

#### *B. Response to Comments*

WAPA received no comments.

#### **IV. Information Collection Request: Applicant Profile Data, OMB Control No. 1910-5136**

WAPA submitted to OMB the request to extend WAPA's APD. The APD and responses to the APD will not be part of a system of records covered by the Privacy Act<sup>8</sup> and will be available under the Freedom of Information Act.<sup>9</sup>

A copy of the APD is available on WAPA's Web page at:

[www.wapa.gov/PowerMarketing/Pages/applicant-profile-data.aspx](http://www.wapa.gov/PowerMarketing/Pages/applicant-profile-data.aspx) and

[www.wapa.gov/PowerMarketing/Documents/Applicant-Profile-Data-form.pdf](http://www.wapa.gov/PowerMarketing/Documents/Applicant-Profile-Data-form.pdf). As discussed, WAPA is not making any significant changes in the content and format of the APD. The APD and the administrative record for the proposal justifying APD's continued use are available for inspection and copying at WAPA's Headquarters in

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<sup>8</sup> See 5 U.S.C. 552(a).

<sup>9</sup> See 5 U.S.C. 552. WAPA reserves the right to redact information to protect confidential or sensitive information, as provided under FOIA.

Lakewood, Colorado.

As part of this process, WAPA has identified the minimum amount of information WAPA needs for its regional offices to properly perform the power marketing functions of the agency. Due to the variations that may develop in each region, the regional office, through its marketing plan, may determine that it does not need to collect all of the information contained in the APD. As a result, WAPA will allow each region to use subsets of the form, where one region's APD may request less information than another region's APD. Also, to ensure equitable treatment of applications when issuing a call for applications, WAPA may provide additional directions to clarify certain sections of the APD, e.g., identify the year or years to use in preparing the APD. Rather than collect unnecessary information, WAPA seeks to collect only the minimal amount of information it needs. To be considered for an allocation of Federal power from WAPA under a marketing plan, the applicant must provide the information requested in the APD. If the requested information is not applicable or is not available, the applicant will note it on the APD. WAPA will request, in writing, additional information from any applicant whose application is deficient. WAPA will notify the applicant when the application is due. In the event an applicant fails to provide sufficient information to allow WAPA to make a determination regarding eligibility by the due date, the application will not be considered.

## **V. Paperwork Reduction Requirements**

### *A. Introduction*

1. *OMB Number:* WAPA's existing OMB Number is 1910–5136. This number is displayed on the front page of the APD. It expires on September 30, 2017.

2. *Title:* Applicant Profile Data.

3. *Type of Review:* WAPA is seeking to extend its APD for 3 years.

4. *Purpose:* The APD is necessary for the proper performance of WAPA's functions.

WAPA markets a limited amount of Federal power. Due to the high demand for WAPA's power and limited amount of available power under established marketing plans, WAPA needs to be able to collect information to evaluate who may receive an allocation under a marketing plan. As a result, the information WAPA collects is both necessary and useful. This public process only determines the information WAPA will collect in its application. The actual allocation of Federal power under a specific marketing plan is outside the scope of this APD process.

5. *Respondent:* The response is voluntary. However, if an entity seeks an allocation of Federal power, the respondent must submit an APD to the specified WAPA regional office. WAPA has identified the following class of respondents as the most likely to apply: municipalities, cooperatives, public utilities, irrigation districts, Native American tribes, and Federal and State agencies. The respondents will be located in Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah, and Wyoming. The information submitted on the APD will not be part of a system of records covered by the Privacy Act<sup>10</sup> and will be available under the Freedom of Information Act.<sup>11</sup>

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<sup>10</sup> See 5 U.S.C. 552(a).

<sup>11</sup> See 5 U.S.C. 552. WAPA reserves the right to redact information to protect confidential or sensitive information, as provided under FOIA.

6. *Annual Estimated Number of Respondents:* The responses will be periodic and occur when WAPA has power available under a specific marketing plan process. Based on historical data, WAPA anticipates approximately 100 requests for power during the 3-year period when the OMB Clearance Number is in effect. This results in an estimated annual average of 33.33 respondents.

7. *Number of Burden Hours and Estimated Reporting and Recordkeeping Costs:*

a. *Initial Application:* WAPA anticipates that it will take less than 8 hours to complete the APD. Once the respondent completes the APD, it will submit the APD to WAPA for review. After submitting the APD, provided the APD is complete and no clarification is required, WAPA does not anticipate requiring any further information for the APD from the applicant, unless the applicant is successful in obtaining a power allocation. The applicant submits only one APD. It does not submit an APD every year. If the applicant receives a power allocation, the applicant will need to complete a regional contract with WAPA to receive a Federal power allocation. WAPA's standard contract terms are outside the scope of this process.

<b>Table 1 – Annual Hour Burden Estimates</b>		
Total number of unduplicated respondents:		33.333
Reports filed per person:		1
Total annual responses:		33.333
Total annual burden hours:		266.664
Average Burden	Per Collection:	8
	Per Applicants:	8

b. *Recordkeeping:* There is no mandatory recordkeeping requirement for the applicant if it does not receive an allocation of Federal power. In such case, any

recordkeeping of the APD by a respondent is voluntary. For those entities that receive a Federal power allocation, WAPA requires the successful applicant to keep the information for 3 years after WAPA grants the power allocation and the applicant signs its regional contract with WAPA. The 3-year record retention policy will allow WAPA sufficient time to administer the regional contract and to ensure the applicant provided factual information in its application. A 3-year record retention policy will have little impact on most businesses in the electric utility industry. WAPA anticipates that it would take less than 1 hour per successful applicant, per year, for recordkeeping purposes. Within a 3-year period, WAPA anticipates having approximately 30 successful applicants.

- c. *Methodology:* Based on the total number of burden hours and the total number of applications described above, WAPA expects that over a 3-year period, the total burden hours to complete the APD is 800 hours (100 applicants over 3 years  $\times$  8 hours per applicant). This converts to an annual hourly burden of 266.7 hours. An entity will only complete the APD once; it is not required each year. WAPA anticipates that there will be additional cost burdens for recordkeeping of 1 hour per year for each applicant who receives a Federal power allocation. Over the course of 3 years, WAPA anticipates there will be 30 successful applicants. The power may be allocated in year 1, year 2, or year 3. For the purposes of determining the cost burden, WAPA will presume all 30 applicants received an allocation in year 1. As a result, the annual hourly burden for recordkeeping is 30 hours. For the purposes of this cost burden analysis, WAPA is assuming that a utility staff specialist will complete the APD. WAPA estimates a utility staff

specialist rate, including administrative overhead, to be approximately \$121/hour.

For recordkeeping, WAPA estimates an administrative support rate of \$60/hour.

- d. *Summary of Burdens:* Based on the above, WAPA estimates the total annual cost as  $[(8 \times \$121) \times 33.33] + [(1 \times \$60) \times 30] = \$34,063.44$  per year. Using these estimates, the applicant's cost to complete the APD is a one-time cost per response of \$968. In addition to the one-time cost, the applicant will incur an additional expense of 1 hour for recordkeeping per year at the administrative support rate of \$60/hour if it successfully receives a power allocation under a marketing plan. The procedure and process for the allocation of power shall be the subject matter of a separate notice and is outside the scope of this process.

<b>Table 2 – Annual Cost Burden Estimate</b>						
Instrument	Number of respondents	Number of responses per respondent	Average annual burden hour	Cost per burden hour	Cost per response	Sub-total cost
Prepare APD	33.33	1	8	\$ 121	\$ 968	\$ 32,263.44
Recordkeeping	30	1	1	\$ 60	\$ 60	\$ 1,800.00
Total Cost						\$ 34,063.44

*B. Does the collection of data avoid unnecessary duplication?*

To avoid unnecessary duplication, only entities that desire a new WAPA allocation are required to submit an APD. As it relates to each component of the APD, there is no duplication. Section 1 is information WAPA needs to identify the applicant; whether the applicant is a statutorily-defined preference entity;<sup>12</sup> and whether the applicant is ready, willing, and able to receive and/or distribute Federal power. Section 2 identifies the amount of Federal power that the applicant requests. Section 3 identifies the applicant's

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<sup>12</sup> See e.g., 43 U.S.C. 485h(c).

loads. Section 4 identifies the applicant's power supply resources. Section 5 identifies the applicant's transmission delivery arrangements to receive Federal power. Section 6 is voluntary and provides the applicant with the ability to provide any additional information. Section 7 is an attestation that the information provided is true and accurate to the best of the applicant's knowledge.

*C. Does the collection reduce the burden on the respondent, including small entities, to the extent practicable and appropriate?*

The information requested is the minimum amount of information needed to determine whether the applicant qualifies as a statutorily-defined preference entity and is ready, willing, and able to receive an allocation of Federal power under a marketing plan.<sup>13</sup>

*D. Does the collection use plain, coherent, and unambiguous language that is understandable to the respondent?*

The collection uses plain, coherent, and unambiguous language that is understandable to the target audience. The terms in the collection are those used in the electric utility industry. WAPA does not market power to individual members of the public such as homeowners or shopkeepers. Preference entities are statutorily-designated potential customers who generally are involved in the power business. As a result, the language used in the application is understandable to the target audience.

*E. Is the collection consistent with and compatible with the respondent's current reporting and recordkeeping practices to the maximum extent practicable?*

The information collection is voluntary. WAPA will use the information to determine

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<sup>13</sup> See e.g., 43 U.S.C. 485h(c).

an allocation of Federal power under a marketing plan. As discussed above, there is no mandatory recordkeeping requirement on the applicant if it does not receive an allocation of Federal power. For those entities that receive a Federal power allocation, WAPA requires that they keep the information for 3 years after WAPA grants the power allocation and the applicant signs a Federal power contract. The 3-year record retention policy for such applicants allows WAPA sufficient time to administer the regional contract and to ensure the applicant provided factual information in its application. WAPA anticipates that a 3-year record retention policy will have little impact on most businesses in the power industry who will keep the APD as part of their normal business records. The procedure and process for the allocation of power shall be the subject matter of a separate marketing plan notice and is outside the scope of this process.

*F. Does the collection indicate the retention period for any recordkeeping requirements for the respondent?*

The APD identifies that there is no recordkeeping requirement for the respondent if it does not receive an allocation of Federal power. It also identifies that applicants who receive an allocation of Federal power must retain the records for 3 years.

*G. Does the collection inform the public of the information the public needs to exercise scrutiny concerning the agency need to collect information (the reasons the information is collected, the way it is used, an estimate of the burden, whether the response is voluntary, required to obtain a benefit, or mandatory and a statement that no person is required to respond unless a valid OMB control number is displayed)?*

WAPA has a limited amount of power available and WAPA's Administrator has discretion in allocating power under a marketing plan. WAPA will (a) use the

information collected on the application, (b) not accept incomplete applications, and (c) work with respondents that require assistance in completing the application. No respondent is required to submit any information unless a valid OMB control number is displayed. No respondent is required to submit any information unless they desire a Federal power allocation under a marketing plan.

*H. Is the collection developed by an office that has planned and allocated resources for the efficient and effective management and use of the information collected?*

WAPA's regional power marketing offices will administer and evaluate the applications. Use and management of the collected information were factored into each office's functions and resource requirements. Historically, WAPA has requested the same relative information from applicants and effectively used WAPA resources to utilize and manage the information in its determinations. Each office will make a recommendation to WAPA's Administrator on which applicant(s) should be awarded a Federal power allocation based upon marketing plan requirements and the information contained in the APD. WAPA's Administrator has discretion in the final award of power allocations. The procedure and process for the allocation of power shall be the subject matter of a separate marketing plan notice and is outside the scope of this process.

*I. Does the collection use effective and efficient statistical survey methods?*

Since the information collected is used to help determine whether an applicant may receive an allocation of Federal power, this section is not applicable.

*J. Does the collection use information technology to the maximum extent practicable to reduce the burden and to improve data quality, agency efficiency, and responsiveness to the public?*

The APD will be accessible for downloading via WAPA's Web page at [www.wapa.gov/PowerMarketing/Documents/Applicant-Profile-Data-form.pdf](http://www.wapa.gov/PowerMarketing/Documents/Applicant-Profile-Data-form.pdf). WAPA will accept e-mail and mail submission of the APD.

## **VII. Invitation for Comments**

WAPA invites public comment on its request to extend its APD that WAPA submitted to OMB pursuant to the Paperwork Reduction Act of 1995. The Paperwork Reduction Act requires OMB to make a decision on the ICR within 60 days after this publication or receipt of the proposed collection of information, whichever is later.<sup>14</sup> Comments should be sent directly to the addresses listed in the **ADDRESSES** section.

Dated: August 25, 2017

Mark A. Gabriel  
Administrator

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<sup>14</sup> See 5 CFR 1320.10(b).

